IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.3631 of 1998

S.Krishnamoorthy ... Petitioner

Vs.

1. Chairman cum Managing Director,
Tamil Nadu Civil Supplies
Corporation Ltd.,
42, Thambusamy Road,
Kilpauk, Chennai 600 010.

2. Senior Regional Manager,
Office of Senior Regional Manager,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Cuddalore. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the records on the file of the first respondent pertaining to his order bearing No.S.M.A.No.G3/6882/97 dated 12.08.1997 and quash the same.

For Petitioner : Mrs.A.V.Bharathi
For Respondents : Mr.A.Edwin Prahbakar
Government Advocate

O R D E R

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This writ petition is filed challenging the order of the first respondent dated 12.08.1997 under which the first respondent being the Appellate Authority has dismissed the appeal filed by the petitioner confirming the order of punishment passed by the second respondent dated 30.09.1996, under which the punishment of stoppage of increment for three months without cumulative effect was ordered.

2. The petitioner joined in the services of the Tamil Nadu Civil Supplies Corporations Limited in 1980 as a Bill clerk and was promoted as Assistant Quality Inspector on 10.03.1982. A charge memo was issued

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against the petitioner on 11.10.1995 with two charges one relating to the correction in medical reimbursement bill alleging that the correction was done by the petitioner for personal gain and the second was that the petitioner has corrected the prescription issued by the Doctor for personal gains thereby cheated the Corporation. The petitioner has submitted his explanation on 21.01.1996 denying the charges. Not satisfied with the explanation the respondents conducted enquiry and the Enquiry Officer has recorded that the petitioner was guilty of the charges. Accepting the said Enquiry Officer's report the second respondent has issued a second show-cause notice calling upon the petitioner to comment about the findings of the Enquiry Officer without proposing the nature of penalty. The petitioner has submitted his note about the Enquiry Officer's report. Inspite of the same, the second respondent passed order on 30.09.1996 imposing the punishment of stoppage of increment for three months without cumulative effect. On appeal the first respondent has confirmed the said punishment by order dated 12.08.1997. The impugned order is challenged on various grounds including that the petitioner was not given the list of witnesses, that there was no evidence to show that the petitioner has altered the medical bill, that the respondents have no jurisdiction and that order is arbitrary and illegal.

3. The second respondent has filed counter-affidavit.

4. The case of the respondents is that the petitioner while purchasing medicine at the cost of Rs.97.50, Rs.98/- and Rs.99/- respectively from M/s. Barathi Pharmacy, Chidambaram, while submitting the same the petitioner has corrected the value of the bills in the following manner namely:

> Bill for Rs.97.50 was altered as Rs.697.50, Bill for Rs.98 was altered as Rs.598 and the Bill for Rs.99 was altered as Rs.699.

5. While the actual medical bill claim was only to the tune of Rs.294.50, he has made a claim of Rs.1994.50. Therefore, according to the respondents, by his conduct the petitioner has cheated the Corporation. During the time of enquiry in fact the petitioner has verified the bills which contain alteration but then he has denied that he has made any alteration. The enquiry was ordered since the charges were framed under Regulation 4 of Chapter - V of the Tamil Nadu Civil Supplies Corporation Service Rules, 1989 namely one for major penalty. It was after the Enquiry Officer's finding which was communicated to the delinquent and after receiving the explanation the final order was passed.

6. It is the case of the respondents that inasmuch as an altered bills have been produced for the purpose of claiming medical reimbursement claim, the petitioner being the beneficiary, he cannot disowned the responsibilities.

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7. M/s.A.V.Bharathi learned counsel appearing for the petitioner would submit that considering the facts and circumstances of the case that even the charge itself is that there was alteration in respect of various medical bills dated 21.03.1992, 06.04.1992 and 06.05.1992, the charges framed in 1995 after three years and therefore, it should be treated as inordinate delay in initiating disciplinary proceedings. Further, it is her contention that there is absolutely no material to prove as to whether the petitioner has made the alteration in the absence of evidence. According to the learned counsel for the petitioner, the benefit of doubt should go in favour of the petitioner. Further, it is the contention of the learned counsel for the petitioner that by referring to the entire documents relating to the charges, it will show that it is in verbatim repetition and therefore there is a non-application of mind.

8. That apart, the learned counsel would further submit that the impugned order passed by the Appellate Authority namely the first respondent dated 12.08.1997 is without assigning any reason and therefore that also suffers the non application of mind. The learned counsel would rely upon the judgment of the Hon'ble Apex Court reported in 2006(3) CTC 669 (Director (Mkt.), Indian Oil Corp.Ltd., and another Vs. Santhosh Kumar) wherein the order of dismissal as well as the order of Appellate Authority were found to cryptic and non speaking and in those circumstances there was a direction to reinstate with liberty to the Management to be restart the enquiry from the stage of consideration by the punishing authority.

9. On the other hand, Mr.A.Edwin Prabhakar learned Government Advocate appearing for the respondents would submit that it is not the case where no opportunity was given but on the other hand, the petitioner has in fact participated at every stage of the enquiry and submitted his explanation including his reply for the Enquiry Officer's report and therefore, it cannot be said that there is violation of principles of natural justice. It is also his contention that when it is not even denied by the petitioner that there is a correction in the prescription as well as the medical bill, the beneficiary being the petitioner, the normal presumption is that the petitioner has done the same and mere denial by the petitioner is not sufficient since he was the beneficiary of the alteration.

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10. I have heard the learned counsel for the petitioner as also the learned Government Advocate appearing for the respondents and perused the entire records.

11. Admittedly, the disciplinary proceedings in respect of the employees of the Civil Supplies Corporation is governed by the Tamil Nadu Civil Supplies Corporation Service Rule, 1989. Chapter - V of the said regulation contemplate the disciplinary proceedings, penalties and appeal regulations. As per the said chapter there are separate regulations in

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respect of the authorities to impose penalties and the Appellate Authority apart from the procedure to be followed for imposing minor penalties and major penalties. As far as the authority to impose punishment as well as the Appellate Authority in respect of the petitioner is concerned there is no serious dispute about the jurisdiction. Even otherwise as per the authorities competent under the said chapter, I do not think that the petitioner can raise any objection about the jurisdiction of the second respondent being the original authority competent to impose punishment and the first respondent being the Appellate Authority.

12. In respect of the procedure for imposing minor penalties even though it says that the charges must be categorized and delinquent must be given reasonable time and opportunity to offer his explanation and the explanation must be carefully analyzed in respect of the every charge and there after the punishing authority should consider the gravity of the charge and decide the quantum of punishment. In respect of the awarding of major punishment the procedure contemplated is that an objective enquiry in respect of the charges must be conducted in the presence of the delinquent after giving notice. The document relied upon in the charge memo should be made available to the delinquent for perusal, the witnesses produced by the delinquent should be examined with due relevance to the charges. On receipt of the Enquiry Officer's report the copy must be forwarded to the delinquent requiring him to file his explanation within reasonable time and after receiving such explanation and considering the entire records and the gravity of the charges, the quantum of punishment has to be decided. Merely because a procedure for major punishment must be followed it does not mean that the major punishment must be imposed. The regulations also contemplate the Appellate Authority's powers.

13. According to the regulations, after the Appellate Authority receives the appeal he calls for connected records from the officer whose order is appealed against. On perusal of the record if any clarification is required a reference could be made. That apart, the appellate authority is bound to go by the materials on the file. The Appellate Authority after examination may remit back the case to the punishing authority for de-novo enquiry if there are lapses in the procedure or if there are no procedural lapses in the enquiry or no new facts are forth coming, the Appellate Authority either exonerate or confirm or reduce the penalty or in cases where the Appellate Authority decided to enhance the penalty the Regulation No.4 has to be again followed as the original authority.

14. Therefore, a reading of the regulation shows that as far as the Appellate Authorities powers are concerned he decides the issue based on the records received from the original authority who passed order, except asking for certain clarifications if the same has warranted, there is no further enquiry contemplated by the Appellate Authority. The only thing that is required of the Appellate Authority is whether he applies its mind on the records to find out as to whether it should confirm or reduce the

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penalty which requires a basic application of mind. It is only in cases where the Appellate Authority decides to enhance the punishment from the original authority, the detailed procedure as that of the original authority has to be followed.

15. In the present case, a reference to the entire records would show that it is not the case of the petitioner that he was not given opportunity at all. On the other hand, when the documents which were alleged to have been altered were on the year 1992, the charges came to be issued on 11.10.1995. Merely because there is a delay of three years, on the facts and circumstances of the case, I do not think that the charges should be set aside by following the judgment of the Hon'ble Apex Court in Mahadevan case reported in 2005(4) CTC 403. That was the case wherein for initiating disciplinary proceedings there was inordinate and unexplained delay and there was every justification for the Hon'ble Apex Court to have interfered. As far as the present case is concerned the bills produced by the petitioner were received in the office on 18.05.1992 in respect of which the charges were framed on 11.10.1995. Considering the grave nature of the charge that there is alteration in the medical bills, I do not think that there is any delay in initiating the disciplinary proceedings.

16. That apart, the petitioner has admittedly given his detailed explanation and it is not even the case of the petitioner that the Enquiry Officer has not followed the procedure properly and no malafide has been attributed. That apart, the Enquiry Officer's report has been forwarded to the petitioner for a remark and in fact the petitioner has submitted his further explanation and it was considering all those facts and by analysis of the individual charge, the second respondent being the original authority has passed the order of imposing the minor penalty. A reference to the order passed by the second respondent being original authority shows that it is after a detailed analysis of the entire situation the order came to be passed and it can never be said that the said order passed with non application of mind.

17. In view of the said factual position, I do not think that the judgment of the Hon'ble Apex Court rendered in Director (Mkt.), Indian Oil Corporation Ltd., and another Vs. Santhosh Kumar reported in 2006(3) CTC 669 is applicable on the facts. That was the case wherein both the Disciplinary Authorities as well as the Appellate Authority have passed cryptic order without application of mind and analysis of the charges and in those circumstances the Hon'ble Apex Court has directed to re-enquire while directing reinstatement of the delinquent, whereas in the present case the original order of punishment passed by the second respondent is with total application of mind passed after giving adequate opportunity to the petitioner, even though the enquiry was in respect of the minor penalty.

18. Now, referring to the impugned order of the first respondent being the Appellate Authority in this writ petition, considering the

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regulations as I have enumerated above, the first respondent Appellate Authority has in fact considered every one of the two charges independently and on application of mind has passed the detailed order.

19. In any event, as it has been laid down by the Hon'ble Apex Court in National Fertilizers Ltd., and another Vs. P.H.Kanna reported in 2005 (7) SCC 597, in cases where the Appellate Authority is confirming the order of the Original Authority in respect of the punishment there is no necessity to have detailed discussion of the entire facts. It is sufficient that the Appellate Authority has applied its mind before passing an order. By applying the yardstick laid down by the Hon'ble Apex Court, I have no hesitation to come to the conclusion that the order passed by the first respondent does not suffer from any illegality and there is no violation of principles of natural justice.

In view of the same the writ petition fails and the same is dismissed. No Costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

nbj

To

1. The Chairman cum Managing Director,
   Tamil Nadu Civil Supplies
   Corporation Ltd.,
   42, Thambusamy Road,
   Kilpauk, Chennai 600 010.

2. The Senior Regional Manager,
   Office of Senior Regional Manager,
   Tamil Nadu Civil Supplies
   Corporation Ltd.,
   Cuddalore.

1 cc To Mrs.A.V.Bharathi, Advocate, SR.45481.

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MKJ(CO)
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